

The Administrative Law Judge found claimant failed to meet his burden of proving that he sustained a compensable injury arising out of and in the course of his employment with respondent. If found compensable, the parties have stipulated that claimant's disability would be based upon a 5 percent whole body impairment of function. Nature and extent of disability is, therefore, not at issue. Accordingly, the Appeals Board will consider whether claimant suffered personal injury by accident arising out of and in the course of his employment with respondent on the date alleged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record and considered the briefs and arguments of the parties, the Appeals Board finds the Award by the Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law as enumerated in the Award by the Administrative Law Judge are found to be accurate and appropriate and are hereby adopted by the Appeals Board as its own as if specifically set forth herein. The Appeals Board agrees that claimant has not met his burden of proof that the disputed back injury resulted from an accident at work on the date alleged and that said injury arose out of and in the course of his employment with respondent.

The Appeals Board further finds that even if claimant sustained a fall at work, as alleged, there is insufficient credible evidence to find said accident resulted in any permanent injury or aggravation of his preexisting condition. The weight of the credible evidence supports a finding that claimant's current condition and complaints are the result of his admitted prior accident or accidents. His upper and lower back condition preexisted the alleged October 10, 1994, incident at work. The opinion of Dr. Keith Skinner, to the effect that claimant suffered a permanent aggravation of his condition between October 6 and October 11, 1994, is simply not credible. Dr. Skinner admits that he did not treat claimant on October 11. Instead, he referred claimant to another physician for treatment based upon claimant's complaints of increased symptomatology. Dr. Skinner did not again treat claimant nor did he have the benefit of claimant's subsequent treatment records. His opinion is without adequate foundation and is untrustworthy.

The Appeals Board adopts the analysis of the evidence by the Administrative Law Judge and finds that claimant has not proved by a preponderance of the credible evidence that he has suffered injury by accident on the date alleged. The Appeals Board concurs with the finding by the Administrative Law Judge that a causal connection between claimant's condition and his employment was not established. Although claimant was having symptoms that seemed more severe on October 11, 1994, they were at the same locations and of the same nature as those he experienced prior to the alleged October 10, 1994, incident at work. The Appeals Board finds claimant has failed to meet his burden of proving a compensable injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Shannon S. Krysl dated April 1, 1996, should be, and is hereby, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John C. Nodgaard, Wichita, KS
Kirby A. Vernon, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director